

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

ALFAYGO NIGHTENGALE,

Petitioner,

v.

Criminal Action No. 5:98CR17-01

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM, OPINION, and ORDER DENYING REQUEST FOR COUNSEL

On November 7, 2005, the *pro se* petitioner, Alfaygo Nightengale, filed a motion entitled “Modification of An Imposed Term Of Imprisonment” in the above-styled 18 U.S.C. § 3582(c)(2) action. Although the petitioner does not expressly request that legal counsel be appointed to represent him on the motion for reduction of sentence, the petitioner states that he is “not an attorney or paralegal” and, therefore, “is unlettered in the framing of legal briefs and memorandums” [sic]. Therefore, the Court construes this language as the petitioner’s request for counsel.

“A criminal defendant has no right to counsel beyond his first appeal.” Coleman v. Thompson, 501 U.S. 722, 756 (1991). “[A]s a general matter, there is no right to assistance of counsel on a motion for reduction of sentence.” United States v. Legree, 205 F.3d 724, 729 (4th Cir. 2000). “A motion pursuant to §3582(c) ‘is not a do-over of an original sentencing proceeding where a defendant is cloaked in rights mandated by statutory law and the Constitution.’” Id. at 730 (citing United States v. Tidwell, 178 F.3d 946 (7th Cir.) cert. denied 528 U.S. 1023 (1999)). However, in some circumstances “due process does mandate the appointment of counsel for certain postconviction proceedings.” United States v. Legree, 205 F.3d at 730. The petitioner has failed

to demonstrate that his current circumstances require the appointment of counsel for him to pursue a cause of action under 18 U.S.C. § 3582(c)(2). Accordingly, the petitioner's motion for appointment of counsel is DENIED.

IT IS SO ORDERED.

The Clerk of the Court is directed to mail a copy of this Order to the *pro se* petitioner and counsel for the respondent.

DATED: December 29, 2005

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE